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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/762,985  
Filing Date: January 21, 2004  
Appellant(s): KONING ET AL.

\_\_\_\_\_  
David J. Thibodeau, Jr. (31,671)  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed on 5/15/2008 appealing from the Office  
action mailed 8/9/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellants' statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

### **(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

### **(8) Evidence Relied Upon**

\_ 6,128,279

O'Neil et al.

10- 2000

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the to the appealed claims

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3 – 8, 10 - 13 are rejected under 35 U.S.C. 102(e) as being anticipated by O'Neil et al. U. S. Patent No. 6,128,279 (referred to hereafter as O'Neil).

O'Neil teaches a system which distributes requests among a plurality of network servers (see abstract).

As to claim 1, O'Neil teaches a system for managing requests from a plurality of clients for access to a set of resources, comprising:

a plurality of storage servers having the set of resources partitioned thereon, each server having a load monitor process capable of communicating with other load monitor processes for generating a measure of system load and a client load on each of the plurality of servers (see col. 3 lines 17 - 47 O'Neil discloses a plurality of servers which directly handle load balancing), and

a client distribution process, responsive to the system load, and capable of repartitioning the set of client connections for distributing client load by moving at least one client connection from a first server of the plurality of servers to a second server of the plurality of servers (see col. 4 lines 1 – 9, and col.6 lines 50 – 61, O'Neil discloses that a server determines whether to process a request or reroute the request to a different server on a network).

As to claim 3, O'Neil teaches a system according to claim 1, further comprising a load distribution process for determining resource loads when moving clients among servers (see col.4 lines 1 – 21).

As to claim 4, O'Neil teaches a system according to claim 1, further comprising: a client allocation process for causing a client to communicate with a selected one of said plurality of servers (see col. 4 lines 22 –36).

As to claim 5, O'Neil teaches a system according to claim 1, further comprising: a client allocation process for distributing incoming client requests across said plurality of servers (see col. 4 lines 22 – 36).

As to claim 6, O'Neil teaches a system according to claim 2, wherein the client distribution process includes a round robin distribution process (see col.1 lines 42 – 54).

As to claim 7, O'Neil teaches a system according to claim 2, wherein the client distribution process includes a client redirection process (see col. 4 lines 1 - 9).

As to claim 8, O'Neil teaches a system according to claim 2, wherein the client distribution process includes a disconnect process for dynamically disconnecting a client from a first server and reconnecting to a second server (see col. 4 lines 1 - 9).

As to claim 10, O'Neil teaches a system according to claim 1, further comprising: an adaptive client distribution process for distributing clients across the plurality of servers as a function of dynamic variations in measured system load (see col.6 lines 11 - 49).

As to claim 11, O'Neil teaches a system according to claim 1, further comprising: a storage device for providing storage resources to the plurality of clients (see col. 6 lines 50 – col. 7 lines 20).

As to claim 12, O'Neil teaches a system according to claim 1, further comprising: a storage service process for providing at least one volume of storage partitioned across the plurality of servers (see col.4 lines 1 – 21).

As to claim 13, O'Neil teaches a storage area network, comprising: a plurality of servers each configured as a server of claim 1 (see rejection of claim 1).

#### **(10) Response to Argument**

The examiner summarizes the various points raised by appellants and addresses them individually.

As per appellants' arguments filed on May 15, 2008, appellants argue in substance that:

**(A) Argument:** O'Neil is not partitioning resources across storage servers and none of O'Neil's servers provide access to a resource having a portion partitioned thereon and the remainder on the other servers (see Brief page 10, lines 3 – 5 and page 12, lines 3 – 5).

**Response:** O'Neil clearly divides the servers into two groups. The first group of servers that have greater than a first predetermined value or level and the second group of servers that has less than a first predetermined value. Therefore O'Neil clearly separates the 2 groups of servers logically and the resources of both groups are accessed by requests based on loads handled by these two groups of servers (see

fig.2A item # 203). Alternately on each server, the server memory is configured to hold a set of resources, a first predetermined level and a second predetermined level. Therefore each server has a partition memory (see col. 6 lines 50 – 61). As for the argument that the remainder or the exclusivity of portions of resources, it is not positively claimed. It is noted that the features upon which applicant relies (i.e. “ and the remainder on other servers”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

**(B) Argument:** O'Neil does not actually disclose moving any established client connections between servers (see Brief page 11, lines 10 – 11 and page 12, lines 5 – 7 ).

**Response:** O'Neil discloses a request can be processed by an online server as opposed to an off line server or less loaded server (see col.4, lines 10 – 21). Moreover, O'Neal discloses a load balancing technique where a client request is redirected or moved to a less loaded server. Therefore, the disclosure of O'Neal meets the scope of the claimed limitation as currently presented since the requests or connections are redirected to less loaded servers.

**(C) Argument:** O'Neil does not adaptively distributes client connections as a function of dynamic variations (see Brief page 12, lines 13 – 14).



**Response:** O'Neil discloses that the load is a dynamic value that is constantly monitored to a predetermined value. Moreover, O'Neil discloses which of the online servers currently has the smallest load or below the first predetermined value , and dynamically routing the network request to the server currently processing the smallest load (see col. 6 lines 11 – 35 and figs. 2A and 2B).

**(D) Argument:** O'Neil does not disclose a storage area network (SAN) that comprises a plurality of servers as recited in claim 13 (see brief page 13, lines 6 – 7).

**Response:** O'Neil discloses a plurality of network servers which directly monitor and handle load balancing on requests received. O'Neil also discloses each of the servers is capable of performing load balancing when a request is received, by either processing the request or redirecting or moving the request to another server in the network .In another aspect, the receiving server determines which, if any, of the servers are off line. The server then routes the request to an online server on the network. Therefore O'Neil discloses a plurality of storage servers (see col. 3 lines 18 – 32) and moving client connection from one server to another server “ load balancing” (see col.6 lines 50 - 61). Therefore, O'Neil disclosure meets the scope of the claimed limitation as currently claimed.

For the above reasons, it is believed that the rejection should be sustained.

Art Unit: 2157

**(11) Related Proceeding(s) Appendix**

No decision rendered by court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

/Sargon N Nano/

Examiner, Art Unit 2157

July 15, 2008

Conferees:

/Salad Abdullahi/

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